IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6631 of 2004

with

CRIMINAL MISC.APPLICATION No 7600 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAKIL @ TEJA GULAMHUSSAIN SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 6631 of 2004
   MR BS PATEL for Petitioner No. 1
   Ms.D.S.Pandit, Addl.PUBLIC PROSECUTOR for Respondent No. 1
2. Criminal Misc.Application No. 7600 of 2004
   MR BS PATEL for Petitioner No. 1
   Ms.D.S.Pandit, Addl.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 22/09/2004

ORAL JUDGEMENT

Rule. Ms.D.S.Pandit, Ld.Addl.PP waives service of rule on behalf of respondent-State.

2. The petitioner who is one of the accused in communal riot case in the offence registered vide CR.No.57/02, dated 2.3.2002 has approached this court for releasing him on bail in view of the order dated 17.3.03 passed by the Addl.Sessions Judge, Baroda whereby the petitioner's bail was cancelled and the petitioner is taken into custody.

3. The short facts of the case appear to be that as per the prosecution case the petitioner was found to have been involved in the aforesaid complaint vide CR.No.57/02 together with other accused for the offences of communal rioting punishable under sections 307, 143, 147,148, 149,336, 436, 353 and 188 IPC read with 135 Bombay Police Act. As per the said complaint, when the police cornered the mob and the petitioner was found with knife. The petitioner, together with other coaccused submitted bail application to the court of Sessions Judge, Baroda being Cr.M.A.No.286/02 and the Ld.Sessions Judge released the petitioner together with the other co-accused on bail and there were three conditions for bail, i.e. (i) not to leave the limits of Baroda District, (ii) mark the presence for a period of three months every Monday at the city police station and (iii) for a period of six months he shall not commit any offence against State which results into disturbing the peace. It appears that the petitioner did not mark the presence and as the petitioner committed offence while on bail, on 27.9.02 the State preferred application for cancellation of the bail. The Ld.Sessions Judge recorded two observations, i.e. (i) that the petitioner did not mark the presence and (ii) that there are offences registered against the petitioner while on bail and the chargesheets were filed and therefore the Ld.Sessions Judge passed the order on 17.3.03 for cancellation of the bail.

4. The petitioner, thereafter, had approached this court by preferring Cr.M.A.No.8044/03 for releasing him on bail. It may be recorded that simultaneously as the petitioner was also arrested in connection with other offences, the petitioner also preferred bail application

before this court being Cr.M.A.No.8005/03 and the alleged offences were for communal rioting vide Sessions Case No.227/02. As the bail application of the petitioner was also rejected in connection with third complaint vide CR No.390/02 dated 9.9.02 for the offences punishable under section 25(1)((C) of Arms Act read with section 135 Bombay Police Act, the petitioner had also preferred bail application before this court being Cr.M.A.No.8047/03. The Cr.M.A.No.8005/03 for bail which was also for the offcences of communal rioting vide CR No.227/02, when was taken up for hearing on 14.11.03, the petitioner withdrew the petition after some arguments and this court passed the following order in Cr.M.A.no.8005/03:

> "Mr.Patel, Ld.counsel for the petitioner, after some arguments weeks permission to withdraw this petition. Permission granted. Rejected as withdrawn. Notice discharged. It would be open to the petitioner to move the trial court for expeditious disposal of the trial."

It may also be recorded that simultaneously in view of the order passed in Cr.M.A.no.8005/03 the petitioner withdrew the other above referred two applications for bail being Cr.M.A.Nos.8004/03 and 8047/03 and this court passed the following order:

> "In view of the order passed by this court in Cri.M.A.No.8005/03, Mr.Patel, Ld.counsel for the petitioners seeks permission to withdraw both these petitions. Permission granted. Rejected as withdrawn. Notice discharged."

5. It appears that thereafter, as per the petitioner, he has been acquitted in Sessions Case No.227/02 as per the judgment, dated 30.6.04 and it is the case of the petitioner that since in the communal riot case being Sessions Case No.227/02 he has been acquitted, the petitioner should be released on bail by this court even for the present complaints vide CR Nos 57/02 and 309/02. In connection with the complaint vide CR No.57/02, the petitioner has preferred Cr.M.A.No.6631/04 for bail whereas for the complaint vide CR No.309/02 the petitioner preferred Cri.Misc.Appln.No.7600/04. Since the matter was pertaining to communal riot case being Sessions Case No.227/02 in which the petitioner came to be acquitted, this court wanted to know as to whether any appeal is

preferred by the State against the acquittal or not, therefore, this court had passed the order on 25.8.04 directing the State to report as to whether it is desirous to prefer appeal or not. Thereafter, on 8.9.04 it was reported by the Under Secretary of the State Government by filing affidavit that the State has taken decision to prefer appeal against the judgment of the Ld.Sessions Judge in Sessions Case No.227/02 and the instructions are already issued to the office of the Public Prosecutor to file appeal.

6. Mr.Patel, Ld.counsel appearing in both the petitions submitted that as such so far as Cri.M.A.No.6631/04 is concerned the petitioner was once released on bail and thereafter the bail has been cancelled on the ground that the petitioer could not mark his presence before the concerned police station and he submitted that as there was curfew during the relevant period the petitioner could not mark his presence and therefore the ground of not marking the presence due to unavoidable circumstances can not be said to be sufficient ground for cancellation of bail Mr.Patel also submitted that so far as second ground of committing offences while on bail is concerned, the learned Sessions Judge has only recorded that the matter is pending and the chargesheets are filed and therefore as per Mr.Patel the Ld.Sessions Judge has not given much weightage to the said aspects. Therefore, he submitted that the petitioner is in custody in view of the order passed by the learned Sessions Judge and he also submitted that the case is not uptil now committed to the sessions court and the trial has not begun and therefore as the petitioner is in custody for a long period the petitioner should be released on bail.

7. So far as Cri.M.A.No.7600/04 is concerned, it has been submitted by Mr.Patel that the offence is under the Arms Act where the minimum punishment is for three years and maximum punishment is for 7 years and therefore keeping in view the gravity of the offence the petitioner deserves to be released on bail because the offence is not an offence punishable for life or the punishment is less than 10 years.

8. On behalf of the State Government it has been stated by the Ld.APP under the instructions of Mr.A.K.Patel, PSI that the petitioner was released on bail by the learned Sessions Judge in connection with the communal riot case on 8.3.02 and while on bail in addition to Sessions Case No.227/02 which is also for communal riot case in which the petitioner is acquitted

(for which the State has decided to go in appeal) and the offence under Arms Act vide C.R.No.309/02 which is the subject matte of Cri.M.A.No.7600/04, the petitioner is also found to have been involved in the offence of other three communal riot cases videe CR Nos 76/02, dated 5.3.02, 176/02, dated 13.6.02 and 186/02, dated 23.6.02 for the charges under sections 307, 143, 147, 148. 149, 336, 436, 353 and 188 of IPC and therefore the petitioner may not be released on bail by this court.

9. It appears that so far as the failure to mark the presence before the Police Station is concerned, the ground sought to be canvassed is that there was curfew and in view of the same the petitioner could not mark the presence and such lapse on the part of the petitioner may be viewed leniently by this court. However, even if such lapse on the part of the petitioner of not marking the presence in time is leniently viewed, what is more serious breach is that while remaining on bail, the petitioner is found to have been involved as per the prosecution case, in five cases of serious offences and out of those five cases of serious offences, four are pertaining to same type of communal riot cases. It is a matter of record that the petitioner is released on bail on 8.3.2002 in connection with first riot case and while on bail the petitioner is found to have been involved in other four communal riot cases and one case under Arms Act, as per prosecution case, and the details of the same are as under:

(i) Communal Riot case vide CR No.76/02, dated 15.3.02
(ii)Communal Riot case vide CR No.176/02, dated 13.6.02
(iii)Communal Riot case vide CR No.186/02, dated 23.6.02
(iv) Communal Riot case vide CR No.227/02, dated 12.7.02
(in which the petitioner is ultimately acquitted and the State has taken decision to prefer appeal against the acquittal before this court.)
(v) Offence under Arms Act vide CR No.390/02, dated 9.9.02

10. Therefore, it appears that even if it is considered that the petitioner is acquitted in one of the riot cases vide Sessions Case No.227/02, the petitioner is found to have been involved, as per the prosecution case, in other three riot cases and one case under Arms Act while the petitioner was on bail as per the order, dated 8.3.02 passed by the Ld.Sessions Judge. It appears that the chagesheets are filed in connection with aforesaid all criminal casees including the offence under Arms Act, and therefore, if the chargesheets are filed

against the petitioner for the aforesaid serious offences of communal riots, it can not be said that the petitioner has not committed serious breach of one of the conditions of bail, i.e. not to commit any offence during bail period which results into breach of peace. In case of Thakorebhai Meghjibhai Patel vs State of Gujarat (Criminal Miscellaneous Application No.726/04 which has been decided on 28.3.04) this court has an occasion to consider the matter for cancellation of bail which was granted by the learned Sessions Judge to the accused for the offence under section 302 of IPC etc. One of the accused namely Ashokbhai while on bail in connection with earlier offences whose sessions cases were pending was alleged to have committed the offence under section 302 of IPC and inspite of the same the learned Sessions Judge had granted bail. This court while considering the said matter for exercising discretion between two accused, of the same offence, at para 12 observed as under:

" However, the further aspects deserve consideration is regarding cancellation of bail for respondent Nos 2 and 3 separately. There is common cogent circumstances for primafacie involvement of both the said accused, but at the same time, if the criminal background is cosidered, it appears that there is no material with this court nor was before the learned Sessions Judge for respondent No.3. In my view the antecedents of the accused would also be relevant circumstance while exercising discretion for bail. As such, normal condition while releasing any accused on bail is that he shall not involve himself in any illegal activities which would include offences. The major purpose of the bail is to protect the liberty of citizen but such libertys should not be to the extent that it becomes danger to the society or to public. Though the accused No.2 is involved in past serious offences referred to hereinabove,he at the relevant point of time has been released on bail and since he was released by courts State made an attempt to detain under PASA. It is true that he has been released thereafter from detention but the aforesaid three criminal cases of serious offences are pending even today. As such, they were pending, even though while continuing on bail in respect to earlier three serious offences, the respondent No.2 is involved in once again serious offence undeer section 302 of murder. Under the circumstances, in any case,

respondent No.3 can not be allowed to be released or continued on bail more particularly when the same is coupled with the allegation of tampering one of the eye witnesses. As there is no such extraordinary past criminal background and pendency of serious criminal cases against respondent No.3 some leniency can be shown to respondent No.3 for continuing on bail by imposing strict conditions. However, so far as No.2 is concerned, there are cogent and overwhelming circumstances to cancel the bail."

This court record shows that against the aforesaid decision of this court, Special Leave to Appeal (Criminal) No.2237/02 was preferred by the aforesaid Ashokbhai before the Hon'ble Supreme Court and the same has been dismissed on 5.7.2004 with the observation that if the final report is filed petitioner would be at liberty to renew his bail application. Therefore , if the accused who is facing charge of serious offences while on bail is found to have been involved in serious offences, it would be a valid ground to cancel the bail or not to exercise discretion to release the accused on bail. It is true that the criteia or the yardstick for the purpose of releasing the person on bail and cancellation of bail may be different, but in the present case, in view of the aforesaid facts and circumstances that the petitioner while on bail is found to have been involved, as per the prosecution case, in serious offences of communal riot, it would not be a case to exercise the discretion for releasing the petitioner on bail. Further, it appears that the petitioner has committed breach of conditions of bail and the breach committed by the petitioner for his alleged involvment in the serious offences of communal rioting as per the prosecution case, and therefore, it can be said to be valid ground for cancellation of bail even if the alleged nonmarking of presence is viewed leniently. Under the circumstances, it can not be said that the power exercised by the learned Sessions Judge of cancelling the bail of the petitioner deserves to be inteferrred with by this court nor the discretion deserves to be exercised by this court for releasing the petitioner on bail in connection with the complaint vide CR No.57/02 or the complaint vide CR No.309/02.

11. As such, after the withdrawal of earlier application by the petitioner, it would not be open to

the petitioner to file successive bail application. However, Mr.Patel submitted that the delay in trial or conducting the criminal case would be a ground for filing another bail application. In my view, when on merits also it is found that the order passed by the Ld.Sessions Judge is legal, proper and does not call for interference and when on merits, it is found by this court that it is not a case for exercising the discretion to release the petitioner on bail, it is not necessary for this court to decide the said issues, as such issues would not assume any importance in view of facts and circumstances of the present case and the observations made hereinabove.

12. In the result, both the petitions are dismissed. Rule in each petition is discharged.

22.9.04 (JAYANT PATEL,J)